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HIGH COURT (SIBU) — DIVORCE PETITION NO SBW-33–122–12 OF 2023
WONG SIONG TUNG J
16 AUGUST 2024

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Family Law — Divorce — Irretrievable breakdown of marriage — Claim for monthly maintenance — Means and needs — Claim for equal divisions of share, interest and right in seven parcels of land — Claim for damages for physical harm and/or mental torture caused by husband — Prayer for injunction to require husband to stay away — Whether husband should be ordered to pay maintenance to wife — What was the fair and reasonable amount of maintenance — Whether parties had obligation to make a full, honest, and frank disclosure of income and property — Whether husband and wife shared equal responsibility for breakdown of marriage — Whether court should consider means and needs — Whether wife entitled to share in division of husband's registered share, interest and right in seven parcels of land — Whether properties were acquired during marriage — Whether husband liable to pay damages to wife for physical harm and/or mental torture — Whether court should grant injunction to require husband to stay away — Divorce and Matrimonial Proceedings Rules 1980 r 61(2) — Law Reform (Marriage and Divorce) Act 1976 ss 76(1), (2)(aa), (5), 77 & 78 — Law Reform (Marriage and Divorce) (Amendment) Act 2017 s 6(a) — Married Women Act 1957

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This was a divorce petition presented by the wife|petitioner against the husband-respondent seeking the dissolution of their marriage. In this petition, the petitioner also claimed for: (a) monthly maintenance of RM2,500; (b) equal division of the respondent's registered share, interest and right in seven parcels of land, alleged to be matrimonial properties; (c) a sum of RM100,000 for physical harm and/or mental torture caused to the petitioner during the marriage; and (d) an order requiring the respondent to stay at least 100 feet away from the petitioner's residence and workplace, and to refrain from disturbing or harassing the petitioner, her family, friends, and relatives. In the present case, there was no issue between the parties that their marriage had irretrievably broken down. The issues that required the court's determination were: (i) whether the respondent should be ordered to pay maintenance to the petitioner, and if so, what was the fair and reasonable amount — regarding this issue, the respondent argued that since the petitioner had not served Form 11 or Form 13 pursuant to r 61(2) of the Divorce and Matrimonial Proceedings Rules 1980 ('the DMPR 1980'), the respondent had no obligation to make a full, honest, and frank disclosure of his income and property; (ii) whether the

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petitioner was entitled to a share in the division of the respondent's registered share, interest and right in seven parcels of land; and (iii) whether the respondent was liable to pay damages to the petitioner for physical harm and/or mental torture allegedly inflicted by the respondent upon the petitioner during the marriage.

Held, allowing the petitioner's claim in part and ordering each party to bear their own costs:

(1) Section 77 of the Law Reform (Marriage and Divorce) Act 1976 ('the LRMDA') empowered the court to order a husband to pay maintenance to his wife. Section 78 of the LRMDA required that the court, in determining the amount of maintenance, must primarily consider the means and needs of both parties, regardless of the proportion of the income of either spouse. Additionally, the court must consider the degree of responsibility each party had for the breakdown of the marriage. The court has to also consider the facts and whole circumstances of the case (see paras 13–14).

(2) Regarding the responsibility for the marriage breakdown, there was no cogent or sufficient evidence to support the petitioner's claim that the respondent engaged in an adulterous affair, which was a serious allegation. Having observed both parties testifying during the trial, the court opined that it was probable that the respondent was miserly, aloof, and insensitive particularly to petitioner and her siblings. Therefore, based on witness testimonies and the observations of both parties during the proceedings, the court found it more probable that both parties shared equal responsibility for the breakdown of their marriage (see paras 15, 17 & 21).

(3) Since the petitioner's claims for ancillary relief were made in the petition and heard by judge, rather than before the registrar, r 61 of the DMPR 1980 did not apply in the present case. Despite r 61 of the DMPR 1980 not being applicable, in applications for ancillary reliefs heard by a judge, the parties were nevertheless under a duty, whether through discovery or otherwise, to make full and frank disclosure of their means and needs. Failure to do so entitled the judge to draw inferences against the defaulting party, insofar as such inferences could be properly drawn (see paras 30–31).

(4) Both parties failed to provide a full, honest and frank disclosure of their incomes and savings, as such, it was difficult for the court to accurately assess their financial means. However, considering the long duration of the marriage and the circumstances established by their testimonies, there was no reason to deny the petitioner a fair and reasonable sum to maintain the standard of living she enjoyed during the marriage with the respondent. The petitioner's uncontradicted testimony indicated that the

respondent previously provided her with RM400 per month. Additionally, he covered her car loan repayment of RM388 per month and her life insurance premium of RM334 per month, payments which ceased after the petitioner left him. Considering the parties' respective ages, their probable means and reasonable needs based on their testimonies as well as the circumstances, the court found that a monthly maintenance sum of RM1,300 was fair and reasonable (see paras 52–55).

(5) Section 76(1) of the LRMDA empowered the court, when granting a decree of divorce, to order the division of any assets acquired by either spouse during their marriage. The court may also order the sale of such assets and the division of the proceeds between the spouses. The amendment to s 76(1) of the LRMDA via s 6(a) of the Law Reform (Marriage and Divorce) (Amendment) Act 2017, which came into force on 15 December 2018 eliminated the requirement that assets must be acquired through the joint efforts of both parties for the court to have the authority to divide them under s 76(1) of the LRMDA. Section 76(5) of the LRMDA clarified that assets acquired during the marriage included those owned by either spouse before the marriage that had been substantially improved during the marriage by the other spouse or through their joint efforts (see paras 56–58).

(6) The court was of the view that only the respondent's shares and interests in Lot 1383 and Lot 460 ('the properties') were assets acquired during the marriage and subject to division under s 76(1) of the LRMDA. Regarding the proportion of division of the shares and interests in the properties, s 76(2)(aa) of the LRMDA recognised the value of a wife's contributions in managing the home and caring for the children and family, contrasting these with monetary contributions. Throughout their nearly 33-year marriage, the wife-petitioner dedicated her entire working life to homemaking. Considering that their children had grown up and financially independent, the marriage lasted 33 years, and taking into account their respective ages and overall circumstances, it would not be unfair or inequitable to regard the petitioner's contributions as equal to the respondent's financial contributions towards acquiring his registered share, interest and right in the properties during their marriage, as such, the court ordered equal division of the properties (see paras 71, 76 & 78–80).

(7) Regarding the petitioner's claim for RM100,000 in damages for alleged physical harm and/or mental torture inflicted by the respondent during the marriage, it was important to note that the Married Women Act 1957 was only applicable to Peninsular Malaysia. Even if such a claim could be sustained in Sarawak, it must be pursued through a separate civil suit rather than as part of a divorce petition under the LRMDA. In any event, the petitioner in the present case had not presented sufficient evidence to

establish, on the balance of probabilities, the physical harm and/or mental torture allegedly inflicted by the respondent during the marriage (see paras 81–83).

(8) Apart from general statements, there was no cogent evidence to establish that the respondent disturbed or harassed the petitioner, her family, friends, or relatives, or that he threatened to continue such behaviour. Based on the evidence from the witness testimonies, including the public assault committed by the petitioner against the respondent, the court found no valid reason or necessity to grant the petitioner's request for an order requiring the respondent to remain at least 100 feet away from her residence and workplace or to refrain from disturbing or harassing her, her family, friends, and relatives (see paras 84–85).

[Bahasa Malaysia summary

Ini adalah petisyen perceraian yang dikemukakan oleh pempetisyen-isteri terhadap responden-suami bagi memohon pembubaran perkahwinan mereka. Dalam petisyen ini, pempetisyen juga menuntut: (a) nafkah bulanan sebanyak RM2,500; (b) pembahagian sama rata bahagian, kepentingan dan hak berdaftar responden dalam tujuh bidang tanah, yang didakwa sebagai harta sepencarian; (c) sejumlah RM100,000 untuk kecederaan fizikal dan/atau penyeksaan mental yang dilakukan ke atas pempetisyen semasa tempoh perkahwinan; dan (d) perintah yang menghendaki responden berada sekurang-kurangnya 100 kaki dari kediaman dan tempat kerja pempetisyen, dan responden dilarang mengacau atau mengganggu pempetisyen, keluarganya, rakan-rakannya dan saudara maranya. Dalam kes ini, tidak ada isu di antara pihak-pihak bahawa perkahwinan mereka telah pecahbelah dengan tidak dapat lagi dipulihkan. Isu-isu yang memerlukan penentuan mahkamah adalah: (i) sama ada responden perlu diperintahkan untuk membayar nafkah kepada pempetisyen, dan jika ya, berapakah jumlah yang adil dan munasabah — berhubung isu ini, responden berhujah bahawa oleh kerana pempetisyen tidak menyampaikan Borang 11 atau Borang 13 menurut k 61(2) Kaedah-Kaedah Prosiding Perceraian dan Hal-Ehwal Suami Isteri 1980 ('PPHESI 1980'), responden tidak mempunyai kewajipan untuk membuat pendedahan penuh, jujur, dan terus terang mengenai pendapatan dan hartanya; (ii) sama ada pempetisyen berhak mendapat bahagian dalam pembahagian bahagian, kepentingan dan hak berdaftar responden dalam tujuh bidang tanah tersebut; dan (iii) sama ada responden bertanggungjawab untuk membayar ganti rugi kepada pempetisyen untuk kecederaan fizikal dan/atau penyeksaan mental yang didakwa dilakukan oleh responden terhadap pempetisyen semasa tempoh perkahwinan.

Diputuskan, membenarkan sebahagian tuntutan pempetisyen dan memerintahkan setiap pihak untuk menanggung kos masing-masing:

(1) Seksyen 77 Akta Membaharui Undang-Undang (Perkahwinan dan

Perceraian) 1976 ('AMUPP') memberi kuasa kepada mahkamah untuk memerintahkan seorang suami membayar nafkah kepada isterinya. Seksyen 78 AMUPP menghendaki mahkamah, dalam menentukan jumlah nafkah, perlu mempertimbangkan kemampuan dan keperluan kedua-dua pihak, tanpa mengira perkadaran pendapatan mana-mana pasangan. Di samping itu, mahkamah perlu mempertimbangkan darjah tanggungjawab setiap pihak terhadap kepecahbelahan perkahwinan tersebut. Mahkamah juga perlu mempertimbangkan fakta dan keseluruhan keadaan kes (lihat perenggan 13–14).

(2) Berkenaan dengan tanggungjawab bagi kepecahbelahan perkahwinan, tiada keterangan kukuh atau mencukupi untuk menyokong dakwaan pempetisyen bahawa responden terlibat dalam hubungan zina, yang merupakan satu dakwaan yang serius. Setelah memerhatikan kedua-dua pihak memberi keterangan semasa perbicaraan, mahkamah berpendapat terdapat kemungkinan besar responden bersikap kedekut, tidak mesra, dan tidak sensitif terutamanya kepada pempetisyen dan adik-beradiknya. Oleh itu, berdasarkan keterangan saksi dan pemerhatian ke atas kedua-dua pihak semasa prosiding, mahkamah mendapati adalah lebih berkemungkinan bahawa kedua-dua pihak berkongsi tanggungjawab yang sama rata atas kepecahbelahan perkahwinan mereka (lihat perenggan 15, 17 & 21).

(3) Memandangkan tuntutan pempetisyen untuk relif sampingan dibuat dalam petisyen dan didengar oleh hakim, dan bukannya di hadapan pendaftar, k 61 PPHESI 1980 tidak terpakai dalam kes ini. Walaupun k 61 PPHESI 1980 tidak terpakai, dalam permohonan untuk relif sampingan yang didengar oleh hakim, pihak-pihak tetap berada di bawah kewajipan, sama ada melalui penzahiran atau sebaliknya, untuk membuat pendedahan penuh dan terus terang tentang kemampuan dan keperluan mereka. Kegagalan berbuat demikian memberi hak kepada hakim untuk membuat inferens terhadap pihak yang ingkar, setakat mana inferens tersebut boleh dibuat dengan betul (lihat perenggan 30–31).

(4) Kedua-dua pihak gagal memberikan pendedahan penuh, jujur dan terus terang mengenai pendapatan dan simpanan mereka, oleh itu, adalah sukar bagi mahkamah untuk menilai dengan tepat kemampuan kewangan mereka. Walau bagaimanapun, mengambil kira tempoh perkahwinan yang panjang dan keadaan yang dibuktikan melalui keterangan mereka, tidak ada sebab untuk menafikan pempetisyen jumlah yang adil dan munasabah untuk mengekalkan taraf hidup yang dinikmatinya semasa perkahwinan dengan responden. Keterangan pempetisyen yang tidak bercanggah menunjukkan bahawa responden sebelum ini memberikannya RM400 sebulan. Selain itu, responden menanggung bayaran balik pinjaman keretanya sebanyak RM388

sebulan dan premium insurans hayatnya sebanyak RM334 sebulan di mana bayaran-bayaran tersebut terhenti selepas pempetisyen meninggalkan responden. Mengambil kira umur pihak-pihak, kemungkinan kemampuan dan keperluan munasabah mereka berdasarkan keterangan mereka serta keadaan, mahkamah mendapati bahawa jumlah nafkah bulanan RM1,300 adalah adil dan munasabah (lihat perenggan 52–55).

(5) Seksyen 76(1) AMUPP memberi kuasa kepada mahkamah, apabila mengeluarkan dikri perceraian, untuk memerintahkan pembahagian mana-mana aset yang diperoleh oleh mana-mana pasangan dalam masa perkahwinan mereka. Mahkamah juga boleh memerintahkan penjualan aset tersebut dan pembahagian hasilnya antara pasangan. Pindaan kepada s 76(1) AMUPP melalui s 6(a) Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) (Pindaan) 2017, yang berkuat kuasa pada 15 Disember 2018 menghapuskan keperluan bahawa aset harus diperoleh melalui usaha bersama kedua-dua pihak agar mahkamah mempunyai kuasa untuk membahagikannya di bawah s 76(1) AMUPP. Seksyen 76(5) AMUPP menjelaskan bahawa aset yang diperoleh semasa perkahwinan termasuk yang dimiliki oleh mana-mana pihak sebelum perkahwinan yang telah dimajukan dengan matannya dalam masa perkahwinan tersebut oleh pihak yang satu lagi atau dengan usaha bersama mereka (lihat perenggan 56–58).

(6) Mahkamah berpendapat hanya bahagian dan kepentingan responden dalam Lot 1383 dan Lot 460 ('hartanah tersebut') adalah aset yang diperoleh semasa perkahwinan dan tertakluk kepada pembahagian di bawah s 76(1) AMUPP. Berkenaan kadar pembahagian bahagian dan kepentingan dalam hartanah tersebut, s 76(2)(aa) AMUPP mengiktiraf nilai sumbangan seorang isteri dalam menguruskan rumah dan menjaga anak-anak dan keluarga, membezakannya dengan sumbangan kewangan. Sepanjang hampir 33 tahun perkahwinan mereka, isteri-pepetisyen mendedikasikan seluruh kehidupan bekerjanya untuk berumah tangga. Memandangkan anak-anak mereka telah dewasa dan bebas dari segi kewangan, perkahwinan tersebut bertahan selama 33 tahun, dan mengambil kira umur dan keadaan keseluruhan setiap pihak, adalah adil dan saksama untuk menganggap sumbangan pempetisyen adalah sama rata dengan sumbangan kewangan responden ke arah memperoleh bahagian, kepentingan dan hak berdaftar dalam hartanah tersebut semasa perkahwinan mereka, oleh itu, mahkamah memerintahkan pembahagian sama rata bagi hartanah tersebut (lihat perenggan 71, 76 & 78–80).

(7) Berkenaan tuntutan pempetisyen untuk ganti rugi berjumlah RM100,000 atas dakwaan kecederaan fizikal dan/atau penyeksaan mental yang dilakukan oleh responden dalam masa perkahwinan, adalah

penting untuk mengambil perhatian bahawa Akta Perempuan Bersuami 1957 hanya terpakai di Semenanjung Malaysia. Andai kata tuntutan sedemikian boleh dikekalkan di Sarawak sekali pun, ia perlu dibuat melalui saman sivil yang berasingan dan bukannya sebagai sebahagian daripada petisyen perceraian di bawah AMUPP. Walau apa pun, pempetisyen dalam kes ini tidak mengemukakan keterangan yang mencukupi untuk membuktikan, di atas imbangan kebarangkalian, kecederaan fizikal dan/atau penyeksaan mental yang didakwa dilakukan oleh responden dalam masa perkahwinan (lihat perenggan 81–83).

(8) Selain daripada kenyataan umum, tiada keterangan kukuh untuk membuktikan bahawa responden mengacau atau mengganggu pempetisyen, keluarga, rakan atau saudara maranya, atau dia mengancam untuk meneruskan kelakuan sedemikian. Berdasarkan keterangan daripada pernyataan saksi, termasuk serangan awam yang dilakukan oleh pempetisyen terhadap responden, mahkamah mendapati tiada sebab atau keperluan yang sah untuk membenarkan permohonan pempetisyen untuk perintah yang memerlukan responden berada sekurang-kurangnya 100 kaki dari kediaman dan tempat kerjanya atau responden dilarang mengacau atau mengganggu pempetisyen, keluarga, rakan dan saudara maranya (lihat perenggan 84–85).]

Cases referred to

Dr Gurmail Kaur a/p Sadhu Singh v Dr Teh Seong Peng & Anor [2014] 11 MLJ 843, HC (refd)
GGC v CCC & Anor [2016] MLJU 377, HC (refd)
Hunter v Hunter [1973] 3 All ER 362, CA (refd)
ICO v AKU [2023] 10 MLJ 480, HC (refd)
Jones v The Law Society (1983) 4 FLR 733 (refd)
Kamalahasan a/l Singaram v Portia Ceri Pooran [2019] MLJU 1442; [2019] AMEJ 1591; [2019] 1 LNS 1793, HC (refd)
Koay Cheng Eng v Linda Herawati Santoso [2004] 6 MLJ 395, HC (refd)
Koay Cheng Eng v Linda Herawati Santoso [2008] 4 MLJ 863, CA (refd)
Leow Kooi Wah v Philip Ng Kok Seng & Anor [1997] 3 MLJ 133, HC (refd)
Livesey (formerly Jenkins) v Jenkins [1985] FLR 813, HL (refd)
N(f) v C [1997] 3 MLJ 855, HC (refd)
Parkunan a/l Achulingam v Kalaiyarasy a/p Periasamy [2004] 6 MLJ 240; [2004] 7 CLJ 175, HC (refd)
Payne v Payne [1968] 1 WLR 390, CA (refd)
Poonageswari a/p P Krishnan v Bailand a/l Govindanam [2019] MLJU 448; [2019] CLJU 688, HC (refd)
Prest v Petrodel Resources Ltd and others [2013] UKSC 34, SC (refd)
Shameni Pillai a/p PB Rajedran v S Arulselvam a/l Sanggilly and Rafidah bt Mat Taib (responden bersama) [2010] MLJU 1333; [2011] 6 CLJ 782, HC (refd)
Shilashshree Shirely Gomez v Raymond Shilendran a/l Simon [2019] MLJU

1578; [2019] AMEJ 1615; [2019] 1 LNS 1977, HC (refd)
Shobana a/p Perumal v Ganesh a/l Guna [2016] MLJU 1108, HC (refd)
Tay Chong Yew & Anor v Onn Kim Muah [2016] MLJU 1720; [2016] 2 CLJ 579, CA (refd)
Wachtel v Wachtel [1973] 2 All ER 829, CA (refd)
White v White [2000] 2 FLR 981, HL (refd)

Legislation referred to

Divorce and Matrimonial Proceedings Rules 1980 r 61, 61(1), (2), Forms 11, 13
Law Reform (Marriage and Divorce) Act 1976 ss 76(1), (2), (2)(aa), (5), 77, 78,
Married Women Act 1957

Esther Wong (with Yap Kai Ling) (Stephen Robert & Wong) for the petitioner.
Chiu Hui Hui (Tang & Partners) for the respondent.

Wong Siong Tung J:

WIFE PETITIONER'S CLAIMS

[1] On 14 December 2023, the wife petitioner presented the divorce petition herein against the husband respondent seeking the dissolution of their marriage. In her divorce petition, the wife petitioner also claims against the husband respondent the following reliefs:

(a) monthly maintenance of RM2,500;

(b) equal division of the husband respondent's registered share, interest and right in seven parcels of land, alleged to be matrimonial properties;

(c) a sum of RM100,000 for physical harm and/or mental torture caused to the wife petitioner during the marriage; and

(d) an order requiring the husband respondent to stay at least 100 feet away from the wife petitioner's residence and workplace, and to refrain from disturbing or harassing the petitioner, her family, friends, and relatives.

BRIEF FACTS

[2] In this case, after the birth of their eldest daughter in 1990, the wife petitioner and husband respondent married on 6 August 1991. Following their marriage, they had another daughter and two sons.

[3] The parties raised their family in a family house at Kanowit in the small town of Kanowit. The husband respondent operated a carpentry business

under the firm name of HC Furniture, also located at Kanowit, which he inherited from his father. A

[4] The wife petitioner worked as a housewife, taking care of their four children. The court believes she also supplemented the family income by selling drinks at fairs and taking on any available tasks that generated income. B

[5] All their children are now grown and independent. The two daughters are married with their own families. One son works in Singapore, and the other works in the Philippines. The wife petitioner and husband respondent now have seven grandchildren. C

[6] The wife petitioner left the husband respondent sometime in January 2022. She stated that she left after confronting the husband respondent about an alleged extra-marital affair with a woman whose identity was unknown to her. D

[7] The wife petitioner is now about 52 years old, and the husband respondent is about 61. Despite their 33-year marriage, shared life, and commitment to raising four children, they are now embroiled in a bitter and hostile divorce battle. E

[8] Their once-shared life, built over decades, is now marred by intense animosity as they engage in a fierce battle over maintenance and matrimonial properties. F

[9] Each accuses the other of improper and cruel conducts including issues related to their private sexual life during their marriage, attempting to sway the court to see their spouse in the worst light possible. The level of animosity between them is so intense that it seems as though they want to see each other completely ruined, ironically despite after about 33 years of shared life. G

[10] The husband respondent denies the various allegations made by the wife petitioner. While he acknowledges that their marriage has irretrievably broken down, he contends that the wife petitioner is not entitled to any of the other claims made in her petition. H

[11] Thus, there is no issue between the parties that their marriage has irretrievably broken down. I

A THE ISSUES FOR DETERMINATION

[12] The three main issues for the court's determination are:

(a) whether the husband respondent should be ordered to pay maintenance to the wife petitioner, and if so, what is the fair and reasonable the amount;

(b) whether the wife petitioner is entitled to a share in the division of the husband respondent's registered share, interest and right in seven parcels of land; and

(c) whether the husband respondent is liable to pay damages to the wife petitioner for physical harm and/or mental torture allegedly inflicted by his upon her during the marriage.

Maintenance to the wife petitioner

[13] Section 77 of the Law Reform (Marriage and Divorce) Act 1976 ('the LRMDA') empowers the court to order a husband to pay maintenance to his wife.

[14] Section 78 of the LRMDA requires that the court, in determining the amount of maintenance, must primarily consider the means and needs of both parties, regardless of the proportion of the income of either spouse. Additionally, the court must consider the degree of responsibility each party has for the breakdown of the marriage. The court have to also consider the facts and whole circumstances of the case.

See: *Shameni Pillai a/p PB Rajedran v S Arulselvam a/l Sanggilly and Rafidah bt Mat Taib (responden bersama)* [2010] MLJU 1333; [2011] 6 CLJ 782; and *Parkunan a/l Achulingam v Kalaiyarasy a/p Periasamy* [2004] 6 MLJ 240; [2004] 7 CLJ 175.

[15] Regarding the responsibility for the marriage breakdown, there is no cogent or sufficient evidence to support the wife petitioner's claim that the husband-respondent engaged in an adulterous affair, which is a serious allegation.

[16] Concerning the wife petitioner's complaint about the husband respondent's use of vegetables (ie a carrot and an elephant plant) in a sexually inappropriate manner upon her, evidence established that she assaulted him on 5 July 2021. This assault demonstrates that she was not physically weak compared to the husband respondent, who had suffered a mild stroke in 2019. Given her demonstrated physical strength, as seen from the video of her attacking him with a wooden stick, it is difficult to believe that she lacked the

ability to resist any such alleged husband respondent's advances if she considered perverse and objectionable. Furthermore, there is no corroborative evidence of these assertions until she lodged her police report on 28 April 2023, when she decided to present the divorce petition.

[17] Having observed both the wife petitioner and husband respondent testifying during the trial, it is probable that the husband respondent is miserly, aloof, and insensitive particularly to the wife petitioner and her siblings.

[18] It is probably true that the husband respondent had little regard for her feelings, wants, and dignity, and likely to have disregard her family members, causing her unhappiness and insecurity. However, it seems that the wife petitioner found his behaviour tolerable, or she would have left him earlier, rather than remaining married and lived with him for about 33 long years.

[19] Conversely, the wife petitioner appears brazen and unapologetic, demonstrating boldness and aggression. She publicly humiliated her husband by assaulting him with a wooden stick, showing no regard for her own dignity, her husband's dignity, the impact on her children, or the scorn and ridicule from the public on their family in a small town. This behavior contradicts any genuine claim of deep consideration or love for her family.

[20] Following the assault, she attempted to care for and console the husband respondent regarding the injuries she inflicted. This behavior indicates not only a confusing and unstable emotional state but also a lack of consistent or rational emotional control.

[21] Based on witness testimonies and the observations of both the wife petitioner and husband respondent during the proceedings, the court finds it more probable that both parties share equal responsibility for the breakdown of their marriage.

[22] The court must consider the 'means' of the parties, which include their earnings (such as salary and wages), assets (such as property, investments, and savings), and liabilities (such as debts and financial obligations). 'Needs' on the other hand, encompass living expenses that cover reasonable costs of daily living, including housing, utilities, food, clothing, and healthcare, while taking into account the lifestyle and standard of living maintained during the marriage.

[23] A meaningful assessment cannot be made unless the parties provide full and frank disclosure of not only their financial obligations, debts, and living expenditures, but also their earnings, property, investments, and savings.

A **[24]** Both the wife petitioner and husband respondent appear to have been perfunctory and vague in disclosing their earnings and savings. This suggests to the court a lack of genuine intent to provide honest and complete information, particularly on the part of the husband respondent.

B **[25]** Learned counsel for the husband respondent referred to r 61(2) of the Divorce and Matrimonial Proceedings Rules 1980 ('the DMPR 1980'). She submitted the requirement for the wife petitioner to serve either Form 11 or Form 13 to compel the husband respondent, should he disagree with the proposed order for ancillary relief, including maintenance claims, to file an C affidavit disclosing details of his property and income.

[26] The learned counsel contended that, since the wife petitioner has not served Form 11 or Form 13 pursuant to r 61(2) of the DMPR 1980, the D husband respondent has no obligation to make a full, honest, and frank disclosure of his income and property.

[27] Rule 61(1) of the DMPR 1980 provides that:

> (1) A petitioner or respondent who has applied for ancillary relief in his petition or E answer and who intends to proceed with the application *before a registrar* shall, subject to Rule 84, file a notice in Form 12 and within four days after doing so serve a copy on the other spouse.

[28] Rule 61(1) of the DMPR 1980 stipulates that the provisions apply only F when the petitioner, in their petition, or the respondent, in their answer to the petition, seeks ancillary relief and intends to proceed with the application before the registrar, *the registrar*, which this court would emphasise. In such cases, the notice in the prescribed form must be filed and served within four days.

G **[29]** Thereafter, under r 61(2) of the DMPR 1980, if the parties do not agree to the terms of the proposed order, the party served with the prescribed form must serve an affidavit in response, containing full particulars of their property and income.

H **[30]** Since the wife petitioner's claims for ancillary relief were made in the petition and heard by judge, rather than before the Registrar, r 61 of the DMPR 1980 does not apply in this case.

I See: *Jones v The Law Society* (1983) 4 FLR 733 at 740.

[31] Despite r 61 of the DMPR 1980 not being applicable, in applications for ancillary reliefs heard by a Judge, the parties are nevertheless under a duty, whether through discovery or otherwise, to make full and frank disclosure of

their means and needs. Failure to do so entitles the judge to draw inferences against the defaulting party, insofar as such inferences can be properly drawn.

See: *Dr Gurmail Kaur a/p Sadhu Singh v Dr Teh Seong Peng & Anor* [2014] 11 MLJ 843; *Koay Cheng Eng v Linda Herawati Santoso* [2004] 6 MLJ 395; *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; *Leow Kooi Wah v Philip Ng Kok Seng & Anor* [1997] 3 MLJ 133; *Payne v Payne* [1968] 1 WLR 390; *Livesey (formerly Jenkins) v Jenkins* [1985] FLR 813; and *Prest v Petrodel Resources Ltd and others* [2013] UKSC 34.

[32] As to means of the husband respondent, he testified by his witness statement (RW1WS) of his registered interest in following seven parcels of land:

(a) 1/3 undivided share in Lot 948 Block 9 Lukut Land District (Lot 948);

(b) 1/2th share in Lot 1383 Block 9 Lukut Land District (Lot 1383);

(c) 1/2th undivided share in Lot 264 Block 9 Lukut Land District (Lot 264);

(d) whole share in Lot 460 Block 9 Lukut Land District (Lot 460);

(e) 1/4th undivided share in Lot 1361 Block 9 Lukut Land District;

(f) 1/4th undivided share in Lot 6 Kanowit Town District (Lot 6); and

(g) 3/8th undivided share in Kanowit Occupation Ticket 13988 (OT 13988).

[33] However, the husband respondent did not disclose any information about his income in his witness statement for examination-in-chief.

[34] Although the husband respondent is the proprietor of HC Furniture, a business operated at the back portion of the shophouse located on Lot 6, his statements about the firm's business operations during cross-examination were inconsistent. Initially, he claimed that the business had ceased operations when he suffered a mild stroke sometime in 2019.

[35] However, in subsequent cross-examination, he contradicted this by stating that the firm did not actually cease operations; instead, he vaguely and evasively said that he was 'almost retired at that time' following the stroke. If he is not retired and still carrying on the business, he should be bold enough to say so if he is honest and has nothing to conceal.

[36] In cross-examination, the husband respondent claimed that shophouses are erected on Lot 264 but astonishingly asserted that he was unsure whether these shophouses were rented out to the firm Ee Tat Spraying and Servicing. He further stated that he did not know the amount of the monthly rental

payments, as the rental was supposedly managed by a company composed of his relatives, whose identities he did not disclose. He claimed to receive only a portion of the rental income, and when questioned about the amount he received, he gave an evasive and vague response, mentioning that it was not fixed but sometimes around RM200 or more per month.

[37] When pressed further in cross-examination about the name of this company, the husband respondent changed his story, stating that it was not a company but rather that the two shophouses were shared among his relatives, whom he did not indicate. His reluctance to provide clear answers and the inconsistencies in his statements cast doubt on the credibility of his assertions, suggesting an effort to obscure the true extent of his assets and income.

[38] In cross-examination, the husband respondent claimed that he has submitted his yearly income tax returns to Lembaga Hasil Dalam Negeri since he began working. Unfortunately, the learned counsel concerned did not inquire in cross-examination about when he started working, leaving the court with insufficient information on this matter.

[39] The husband respondent stated he could produce his income tax return for the year 2022 and claimed to have provided this document to his lawyer. However, it was not produced for discovery, and thus did not appear in the trial bundles. This omission suggests a deliberate attempt to withhold information that could reveal his true earnings, making it challenging for the court to assess a fair amount for the wife petitioner's maintenance if required.

[40] Furthermore, the husband respondent has not disclosed any information regarding his savings, bank accounts, or other investments, raising further suspicion about his financial transparency.

[41] It is implausible that the husband respondent has completely ceased operations of his business, HC Furniture, which he inherited from his father, or that he has no income or savings.

[42] The evidence established that, in 2023, he managed to purchase a Toyota Hilux (Registration No QS3119A) in his firm's name through a hire purchase agreement with Public Bank Bhd, committing to monthly payments of RM600 over a five-year term. This recent acquisition undermines his claims of having no income or savings and raises doubts about the veracity of his vague assertions regarding his financial situation.

[43] The wife petitioner claimed to work part-time as a masseuse at Siam Thai Spa, earning approximately RM500 per month. She provided three bank-in slips or bank transfer receipts (exh 1 (P)-PBD pp 47–49) showing

payments of RM1,000 on 11 December 2023, RM2,000 on 16 April 2023, and RM2,000 on 3 July 2023. These amounts are inconsistent with her stated monthly earnings of RM500.

[44] She mentioned that she does not have salary slips but did not explain why she could not obtain them from her employer or disclose the employer's identity. The absence of testimony from her employer to verify her claim further undermines the credibility of her assertion that she earns only RM500 per month.

[45] During cross-examination, the wife petitioner indicated that her salary was based on the hours worked, which she claimed she did not calculate. She stated that her employer charged RM60 per hour for body massages, with her sharing half of this amount. Then at the next instance in cross-examination, she agreed that her salary was not fixed.

[46] At another instance in her cross-examination, she also said that she sold 'air bandong' to longhouse, however, upon further cross-examination, she said that, that was in 2017 and she is not selling it now. This raises concerns about whether she intended to mislead.

[47] The wife petitioner appears to be vague about her monthly income too, consistently presenting it as approximately RM500. This raises the question of how she manages to cover her total monthly expenses of RM1,962 as she asserted, given the disparity between her reported earnings and her claimed expenditures.

[48] Her KWSP-EPF Penyata Ahli Tahun 2023 (exh 1 (P)-PBD p 60) indicates self-contributions of RM1,000 on 3 February 2023 and RM1,000 on 7 August 2023.

[49] It is more probable that the wife petitioner monthly earning is more than RM500. However, the exact amount cannot be accurately determined due to her vague testimony and its inconsistency with the documentary evidence.

[50] It is indisputable that the wife petitioner is the registered co-proprietor of a 1/1926 undivided share, interest and right in Lot 1291, Block 9 Lukut Land District, acquired in 1996 for RM58,000, which she claimed was purchased with her personal savings.

[51] She also testified that she relied on her personal savings before their marriage and on funds from the husband respondent afterward to cover

household expenses, raise the children, and manage her business of selling drinks to the longhouses. However, aside from these statements, she has not provided documentary evidence to substantiate her savings or disclose her current savings. Additionally, she has not fully disclosed her bank accounts, leaving her financial situation obscure.

[52] Thus, given both parties' failure to provide a full, honest and frank disclosure of their incomes and savings, accurately assessing their financial means is difficult.

[53] However, considering the long duration of the marriage and the circumstances established by their testimonies, there is no reason to deny the wife petitioner a fair and reasonable sum to maintain the standard of living she enjoyed during the marriage with the husband respondent.

[54] The wife petitioner's uncontradicted testimony indicates that the husband respondent previously provided her with RM400 per month. Additionally, he covered her car loan repayment of RM388 per month and her life insurance premium of RM334 per month, payments which ceased after the wife petitioner left him.

[55] Considering the parties' respective ages, their probable means and reasonable needs based on their testimonies as well as the circumstances, this court finds that a monthly maintenance sum of RM1,300 is fair and reasonable. This amount is more probably within the husband respondent's means to pay and will enable the wife petitioner to maintain the standard of living she enjoyed during their marriage.

Division of the husband respondent's interest in seven parcels of land

[56] Regarding the wife petitioner's claim for division of the husband respondent's registered in the seven parcels of land, s 76(1) of the LRMDA empowers the court, when granting a decree of divorce, to order the division of any assets acquired by either spouse during their marriage. The court may also order the sale of such assets and the division of the proceeds between the spouses.

[57] The court notes that s 6(a) of the Law Reform (Marriage and Divorce) (Amendment) Act 2017, which came into force on 15 December 2018, removed the phrase 'by their joint efforts' from s 76(1) of the LRMDA. This amendment eliminates the requirement that assets must be acquired through the joint efforts of both parties for the court to have the authority to divide them under s 76(1) of the LRMDA.

See: *Poonageswari a/p P Krishnan v Bailand a/l Govindanam* [2019] MLJU 448; [2019] CLJU 688 at para 59 to 60; and *Kamalahasan a/l Singaram v Portia Ceri Pooran* [2019] MLJU 1442; [2019] AMEJ 1591; [2019] 1 LNS 1793 para 40.

[58] Section 76(5) of the LRMDA clarifies that assets acquired during the marriage include those owned by either spouse before the marriage that have been substantially improved during the marriage by the other spouse or through their joint efforts.

[59] In the case of *Tay Chong Yew & Anor v Onn Kim Muah* [2016] MLJU 1720; [2016] 2 CLJ 579, the Court of Appeal, following the House of Lords decision in *White v White* [2000] 2 FLR 981, ruled that gifts and inheritances acquired by a spouse during the marriage originate from sources external to the marriage. Therefore, they are not considered as assets acquired during the marriage available for division under s 76(1) of the LRMDA.

See also: *GGC v CCC & Anor* [2016] MLJU 377; and *N(f) v C* [1997] 3 MLJ 855.

The husband respondent's 1/2th undivided share in Lot 264 Block 9 Lukut Land District (Lot 264) (asset acquired before marriage and gift)

[60] The title document for Lot 264 (exh 7(R)-RBD (12 to 14)) shows that the husband respondent purchased a 1/2th undivided share on 28 September 1987 for RM11,000. On 11 September 1990, he transferred a 1/4th undivided share to his mother, the late Pang Kim Ing for RM5,000. Both transactions occurred before his marriage to the wife petitioner on 6 August 1991.

[61] After their marriage, and on 4 November 2009, the 1/4 share from the late Pang Kim Ing was transferred back to the husband respondent for a consideration of natural love and affection, indicating it was a gift from the husband respondent's late mother.

[62] Although the land includes two double-storey shophouses rented to Ee Tat Motors Spraying and Servicing, there is no evidence that these properties were substantially improved during the marriage by the wife petitioner or through their joint efforts.

[63] Therefore, Lot 264 is not considered an asset acquired during the marriage and is not available for division by the court.

The husband respondent's 1/2th undivided share in Lot 1383 Block 9 Lukut Land District (Lot 1383) (assets acquired during marriage)

[64] The title document for Lot 1383 (exh 7(R)-RBD p 9 to 10) established that the husband respondent and his late mother, Pang Kim Ing, each acquired an undivided half-share of the land on September 30 1996, which is after the husband respondent's marriage to the wife petitioner on 6 August 1991.

[65] Consequently, the husband respondent's undivided half-share is subject to division under s 76(1) of the LRMDA.

The husband respondent's whole share in Lot 460 Block 9 Lukut Land District (Lot 460') (asset acquired during marriage)

[66] The document of title for Lot 460 (exh 7R-RBD pp 15 to 16) shows that the husband respondent acquired the property on 4 November 2009 for a consideration RM28,999.03, that is after the husband respondent's marriage with the wife petitioner on 6 August 1991.

[67] Therefore, Lot 460 is also subject to division between the parties under s 76(1) of the LRMDA.

The husband respondent's:

(a) 1/3rd undivided share in Lot 948 Block 9 Lukut Land District (Lot 948);

(b) 1/4th undivided share in Lot 1361 Block 9 Lukut Land District (Lot 1361);

(c) 1/4th undivided share in Lot 6 Kanowit Town District (Lot 6); and

(d) 3/8th undivided share in Kanowit Occupation Ticket 13988 (OT 13988),

(inheritance acquired during marriage).

[68] The title document for Lot 948 (exh 7(R)-RBD pp 5–8) shows that on 30 April 2012, the husband respondent inherited a 1/6th undivided share as a beneficiary of his late father, Kong Hwa Sin's estate, and received another 1/6th undivided share from Kong Siang Kiong as a gift, given for consideration of love and affection.

[69] The title documents for Lot 1361 (exh 7(R)-RBD pp 17–20), Lot 6 (exh 7(R)-RBD pp 21–24), and OT 13988 (exh 7(R)-RBD-p pp 25–29) show

that on 30 April 2012, the husband respondent inherited undivided shares and interests in these three parcels of land as a beneficiary of his late father, Kong Hwa Sin's estate.

[70] Thus, the shares and interests held by the husband respondent in these four parcels of land are not available for division under s 76(1) of the LRMDA.

[71] For the reasons given, only the husband respondent's shares and interests in Lot 1383 and Lot 460 are assets acquired during the marriage and subject to division under s 76(1) of the LRMDA.

[72] Regarding the proportion of division of the husband respondent's shares and interests in these two parcels of land between the parties, s 76(2) of the LRMDA provides:

> (2) In exercising the power conferred by subsection (1) the court shall have regard to —
>
> (a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets or payment of expenses for the benefit of the family;
>
> (aa) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family;
>
> (b) any debts owing by either party which were contracted for their joint benefit;
>
> (c) the needs of the minor children, if any, of the marriage;
>
> (d) the duration of the marriage,
>
> and subject to those considerations, the court shall incline towards equality of division.

[73] Even before their marriage, and at the age of about 17, the wife petitioner had already borne a daughter for the husband respondent. During the marriage, she bore three additional children for the family.

[74] Based on the evidence from the parties' testimonies, this court believes that throughout the marriage, in accordance with the norms of traditional Chinese family roles of their era, the husband respondent worked to generate income for the family's needs. Meanwhile, the wife petitioner dedicated herself to the welfare of the family by managing the household and caring for their four children and in bringing the children up. Additionally, it is more probable that the wife petitioner also supplemented the husband respondent's earnings by engaging in various tasks to bring in extra income, thereby alleviating some of his financial burden.

[75] During cross-examination, the husband respondent admitted that he was aware of the wife petitioner selling vegetables and fish at the market part-time.

[76] Section 76(2)(aa) of the LRMDA recognises the value of a wife's contributions in managing the home and caring for the children and family, contrasting these with monetary contributions.

See: *Tay Chong Yew & Anor v Onn Kim Muah* [2016] MLJU 1720; [2016] 2 CLJ 579; *Shilashshree Shirely Gomez v Raymond Shilendran a/l Simon* [2019] MLJU 1578; [2019] AMEJ 1615; [2019] 1 LNS 1977, para [26]; *Hunter v Hunter* [1973] 3 All ER 362; and *Wachtel v Wachtel* [1973] 2 All ER 829 at 839.

[77] By forgoing the opportunity to work outside the home and choosing to be a homemaker, a wife indirectly contributes to the marriage by managing the household and caring for the children. Although her contributions are not monetary, she enables her husband to focus on his career and acquire assets during the marriage by taking on these responsibilities.

[78] Throughout their nearly 33-year marriage, the wife petitioner dedicated her entire working life to homemaking. There is no reason why the wife petitioner's role and works as a homemaker, managing the family's needs, should be valued less than the husband respondent's monetary contributions toward assets acquired during their long marriage.

[79] Considering that their children are now grown and financially independent, the marriage lasted 33 years, and taking into account their respective ages and overall circumstances, it would not be unfair or inequitable to regard the wife petitioner's contributions as equal to the husband respondent's financial contributions towards acquiring his registered share, interest and right in Lot 1383 and Lot 460 during their marriage.

[80] Therefore, the division of the husband respondent's registered share, right and interest in the two parcels of land acquired during the marriage should reflect their equal contributions made during their marriage, and equal division should be made accordingly.

Wife petitioner's claim for RM100,000 as damages for physical harm and/or mental torture allegedly inflicted by the husband respondent during the marriage

[81] Regarding the wife petitioner's claim for RM100,000 in damages for alleged physical harm and/or mental torture inflicted by the husband respondent during the marriage, it is important to note that the Married

Women Act 1957 applies only to Peninsular Malaysia.

[82] Even if such a claim could be sustained in Sarawak, it must be pursued through a separate civil suit rather than as part of a divorce petition under the LRMDA. The court's jurisdiction under the LRMDA is limited to matters such as granting the dissolution of marriage, awarding maintenance to spouses and children, determining custody, care, and access, dividing assets acquired during the marriage, awarding damages for adultery against third party and issuing restraining orders against molestation by either spouse.

See: *ICO v AKU* [2023] 10 MLJ 480; and *Shobana a/p Perumal v Ganesh a/l Guna* [2016] MLJU 1108.

[83] Furthermore, aside from some general statements and vague assertions, the wife petitioner has not presented sufficient evidence to establish, on the balance of probabilities, the physical harm and/or mental torture allegedly inflicted by the husband respondent during the marriage.

PRAYER FOR INJUNCTION TO REQUIRE THE HUSBAND RESPONDENT TO STAY AWAY

[84] Apart from general statements, there is no cogent evidence to establish that the husband-respondent disturbed or harassed the wife petitioner, her family, friends, or relatives, or that he threatened to continue such behaviour.

[85] Based on the evidence from the witness testimonies, including the public assault committed by the wife petitioner against the husband respondent, this court finds no valid reason or necessity to grant the wife petitioner's request for an order requiring the husband respondent to remain at least 100 feet away from her residence and workplace or to refrain from disturbing or harassing her, her family, friends, and relatives.

[86] Counsel for the wife petitioner did not make any submission regarding the necessity for such an order. Therefore, the court considers the prayer for such order to have been abandoned.

PRONOUNCEMENT AND ORDERS

[87] For the reasons provided, the court orders as follows:

(a) that the marriage solemnised on 6 August 1991 at Persatuan Kwang Tung, Kanowit between L (F), the petitioner and K, respondent be dissolved on the ground that the marriage has irretrievably broken down, unless sufficient cause be shown to the court within three months from the making hereof why this decree should not be made absolute;

A (b) that the respondent do pay maintenance of RM1,300 per month to the petitioner commencing in August 2024. The first payment shall be made before the end of August 2024, and subsequent payments shall be made on or before the 14th of each month. Payments should be deposited directly into the petitioner's bank account as she may notify in writing;
B and

(c) that the respondent do within 30 days of the decree absolute, transfer to the petitioner, one-half (1/2) of all the respondent's shares, interest and right in the two parcel of land, namely, Lot 1383, Block 9, Lukut Land District and Lot 460, Block 9, Lukut Land District. All stamp duties,
C expenses, charges, and costs for the transfer and registration shall be shared equally by the petitioner and respondent.

[88] Since the wife petitioner has only partially succeeded in her claims, each
D party shall bear their own costs of the action by the petition.

Petitioner's claim allowed in part; each party to bear their own costs.

Reported by Dzulqarnain Ab Fatar

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